

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 08-7179

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

DARRYL FREDERICK MASHBURN,

Defendant - Appellant.

Appeal from the United States District Court for the Western
District of North Carolina, at Asheville. Lacy H. Thornburg,
District Judge. (1:95-cr-00026-LHT-1)

Submitted: May 28, 2009

Decided: June 3, 2009

Before WILKINSON, KING, and GREGORY, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Claire J. Rauscher, Executive Director, Matthew R. Segal,
Assistant Federal Public Defender, Asheville, North Carolina;
Tanzania Cannon-Eckerle, Charlotte, North Carolina, for
Appellant. Amy Elizabeth Ray, Assistant United States Attorney,
Asheville, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Darryl Frederick Mashburn appeals the district court's orders denying his motion for modification of sentence pursuant to 18 U.S.C. § 3582(c)(2) (2006) and denying his motion for reconsideration. Mashburn argues that the district court erred by failing to reduce his sentence based on Amendment 706 of the Guidelines. See U.S. Sentencing Guidelines Manual ("USSG") § 2D1.1(c) (2007 & Supp. 2008); USSG App. C Amend. 706. As we recently observed, "Amendment 706 . . . amended § 2D1.1 of the Sentencing Guidelines by reducing the offense levels associated with crack cocaine quantities by two levels." United States v. Hood, 556 F.3d 226, 232 (4th Cir. 2009). "Because [Mashburn's] 240-month Guidelines sentence was based on a statutory minimum and USSG § 5G1.1(b), it was not based on a sentencing range lowered by Amendment 706" Id. at 233. The fact that the district court reduced Mashburn's sentence for substantial assistance under 18 U.S.C. § 3553(e) (2006) and Fed. R. Crim. P. 35 is irrelevant to the applicability of Amendment 706. Hood, 556 F.3d at 234. Accordingly, we affirm the decision of the district court. We deny Mashburn's motion to appoint counsel. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED